

The Human Rights Code—An Overview

The *Human Rights Code*, 1981 provides that every person has a right to freedom from discrimination

in the areas of:

- services, goods and facilities
- the occupancy of accommodation
- contracts
- employment
- membership in vocational associations and trade unions

on the grounds of:

- race
- ancestry
- place of origin
- colour
- ethnic origin
- citizenship
- creed
- sex
- handicap
- age (18-65 years in employment; 18 years and over in the other areas)
- marital status (includes cohabitation, widowhood, separation)
- family status (parent-child relationship)
- the receipt of public assistance (in accommodation only)
- record of offences (provincial offences, pardoned federal offences—in employment only).

The Code prohibits harassment because of any of the prohibited grounds, including sex and race, in accommodation and employment. It also prohibits unwelcome sexual solicitations or advances made by a person in a position of authority, or a reprisal because an advance has been refused.

The Code contains certain exceptions, and not all of the grounds of discrimination apply in every area. To find out if the Code applies to a particular case, please refer to the statute, or contact the nearest office of the Ontario Human Rights Commission.

THE ONTARIO HUMAN RIGHTS COMMISSION

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HUMAN RIGHTS

and Sexual Harassment



SEXUAL HARASSMENT

Sexual Harassment and the Ontario Human Rights Code

The *Human Rights Code, 1981* provides a remedy for three common types of sexual harassment.

The first type is "a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome" perpetrated by the person's landlord, someone acting for the landlord, a co-tenant, a person's employer, someone acting for the employer, or a co-worker. Examples of this type of behaviour include repeated sexual remarks, or physical contacts, that are degrading.

The second type of behaviour is a sexual advance or solicitation made by a person who is in a position to grant or deny a benefit to another. This is a contravention of the Code when the person making the solicitation or advance knows, or should know, that such behaviour is unwelcome. Unwelcome advances from a professor or teacher to a student, from a landlord to a tenant, or from an employer to an employee are examples of this type of behaviour.

A third type of prohibited behaviour occurs when a person who is in a position to grant or deny a benefit threatens or institutes a reprisal against the person who rejected his or her sexual advance. An example is the denying of a promotion or firing of an employee because the employee has refused a sexual proposition.

What to Do if You are Sexually Harassed

- Tell the harasser very clearly that his or her behaviour is not welcome.
- If the harasser is a co-worker, co-tenant or someone who acts for the landlord or the employer, complain to someone who has some authority over the harasser. Ask that person to take steps to stop the harassment. It is a good idea to complain in writing, noting the occasions on which you told the harasser that his or her conduct was unwelcome. Ask for a written response. Be sure to keep a copy of what you wrote and any response you receive.
- If you are a member of a union, tell your union representative what happened. Again, it is a good idea to complain in writing, and to ask for a written response.
- Keep written notes about what happened to you when the harassment occurred, and what you did about it.
- Contact the Ontario Human Rights Commission.

Filing a Complaint

When a person believes that he or she has been sexually harassed, he or she may file a complaint by contacting the nearest office of the Ontario Human Rights Commission. The Code forbids reprisal or other actions against anyone who complains to the Commission (the complainant), or who assists with a complaint. For example, if an employer threatens to fire an employee for filing a complaint, or a landlord refuses to renew a lease because a tenant gave evidence about a complaint, the employer and the landlord are breaking the law.

Upon receiving a complaint, the Commission has the responsibility to investigate the matter with a view to arriving at an appropriate settlement. The purpose of the investigation is to obtain the facts which gave rise to the complaint. Where appropriate, case settlements provide remedies for the person making the complaint, and may include an undertaking by the person against whom the complaint is made (the respondent) to take steps to prevent further harassment. Settlements may also include compensation for lost wages and mental anguish, or an offer of the next available job or accommodation.

Alternatively, the Commission will dismiss a complaint if it is of the opinion that the subject matter of the complaint is trivial, frivolous, vexatious or made in bad faith, or that there is a more appropriate procedure for dealing with it under another law of Ontario. Where the facts upon which a complaint is based occurred more than six months before the complaint was filed, the Commission may dismiss the complaint, unless the Commission is satisfied that the delay was justified. If the Commission decides to dismiss a complaint, it will notify the complainant in writing, and advise of the procedure for having the decision reconsidered.

If a case cannot be settled, the Commission will review the evidence with a view to deciding whether to request the Minister of Labour to appoint a Board of Inquiry to hear the complaint. If the Board finds that there has been a contravention of the Code, it may issue an order to ensure compliance with the Code, and may order the payment of compensation to the complainant. If the Commission decides that a Board of Inquiry is inappropriate in the circumstances, it will notify the parties in writing, and advise the complainant of the procedure for having the decision reconsidered.

People in Authority Have a Responsibility

A person who has the authority to prevent or discourage sexual harassment is considered responsible for failing to exercise his or her authority to do so. If a complaint of harassment goes to a Board of Inquiry, the Board may find that a person, such as an employer or a landlord, knew or should have known about the harassment, and could have stopped it. If the Board finds this, the responsible person may be added as a party to the hearing. If the harassment happens again, and the Board finds that this person did not try to prevent the harassment or take action against the harasser, the Board may order the person in authority to take steps to prevent further harassment. If the person in authority disobeys the order, he or she may be prosecuted.

Preventing Sexual Harassment

The following are preventive measures suggested for dealing with sexual harassment:

- Post a policy directive prohibiting the practice of sexual harassment. Use existing communication channels, such as a company newsletter, to ensure that everyone is aware of the policy.
- Post Ontario Human Rights cards.
- Include sexual harassment as a topic for discussion at seminars and workshops for managers and supervisors to inform them of the seriousness of the issue and its implications.
- Organize similar seminars for employees. Inform them of company policy regarding sexual harassment and of the complaint procedure available to them.
- Unions can educate officials, shop stewards and general membership; provide guidelines for the procedure to follow when a sexual harassment situation arises; discuss the issue at union meetings; and include it in steward training programs.

For further information or assistance, please contact the nearest office of the Ontario Human Rights Commission.